IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 730 of 2002
in
SPECIAL CIVIL APPLICATION No 8091 of 1988
with
CIVIL APPLICATION No 6918 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REGIONAL MANAGER,UNION BANK OF INDIA,
Versus
JANSUKHLAAL CHHAGANLAL NAGORI,

Appearance:
1. LETTERS PATENT APPEAL No. 730 of 2002
MR KM PATEL for Appellants
MR SB PANDIT for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 18/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The appellant Bank challenges the judgment and order of the learned Single Judge passed on 19th August, 2002 allowing the petition of the respondent by directing the appellants to pay him the amount of Bank's contribution of the Provident Fund together with interest at the rate of 12% from the date of such amount becoming payable till realization and also directing the appellant to pay the amount of his gratuity as may be admissible under the law together with 12% interest from the date it became payable to the respondent till its realization.

#. The respondent who was working as Branch Manager at Dewa Branch of the appellant Bank, came to be dismissed after a Departmental Inquiry which dismissal order he unsuccessfully challenged as it was ultimately confirmed by the Division Bench of this Court in Letters Patent Appeal No. 112/90 on 4thFebruary, 1994. By the present petition presented on 18th August, 1988, the respondent sought a writ of mandamus on the present appellant for directing it to pay the Provident Fund and gratuity dues of the respondent, seeking a declaration that the impugned order dated 1st July, 1988, which is at Annexure:A to the petition, was illegal and void to the extent that it kept the payment of the Banker's contribution in the Provident Fund Account of the respondent in abeyance. A declaration was also sought that the impugned order dated 29th August, 1988 at Annexure:E to the petition, forfeiting the gratuity amount was illegal. By that order dated 29th August, 1988, the respondent was informed that his gratuity amount of Rs. 43,875/- was fully forfeited under the Bank Gratuity Rules since financial loss likely to be caused to the Bank was Rs. 1,74,777.60 ps.

#. The learned Single Judge, taking note of the provisions of Rules 17 and 18 of the Employees Provident Fund Rules of the Bank, came to a finding that the monetary loss was not ascertained by the Bank under Rule 17 nor was any decision taken by the Board of Directors under Rule 18 in case of the respondent and, therefore, the amount of Provident Fund to the extent of employer's contribution was wrongly withheld. The learned Single Judge relied upon the decision of a Division Bench of this Court in Central bank of India Vs. Ghanshyamlal Mohanlal Jani, reported in 22 GLR 145, in which while considering the provisions of Rule 18 of the Central Bank

Provident Fund Rules, which was identical to the present Rule 18, held that no declaration was made by the Board as contemplated by Rule 18 and that Bank was not entitled to withhold the Provident Fund dues which were payable to the employee. It was held by the learned Single Judge that at no point of time, the respondent was ever told as to what was the actual financial loss suffered by the Bank due to his misconduct which entailed his dismissal from service and, therefore, the action forfeiting the gratuity amount was in violation of Rule 3 of the Gratuity Rules. The learned Single Judge negatived the contention that in such event, the matter ought to be sent back to the Board for taking appropriate decision, on the ground that the Board was required to take a decision long back at the relevant time.

#. The learned counsel appearing for the appellants contended that in the chargesheet itself, the amount of loss, which the Bank was likely to suffer was specifically mentioned. It was stated that as a result of the misconduct of the respondent, a sum of Rs. 24,000/- was overdue in the accounts of the borrowers to whom the delinquent had made reckless advances in 23 accounts in gross violation of lending norms. The learned counsel for the appellants argued that not only the amount mentioned in the chargesheet, but even in the finding of the Inquiry Authority, it was clearly stated that the gross negligence of the respondent was likely to involve the Bank in serious monetary loss. It is pointed out from the affidavit-in-reply filed by the Bank that it was stated in para 5 thereof that huge amount of Rs. 1,78,739.05 ps. was required to be written off by the Bank in the year 1989. Statement at Annexure:E, which is referred to in the said para and annexed to the affidavit-in-reply, was pointed out to show that even after waiver of interest of Rs. 2,18,783/-, the said amount due from the borrowers had to be written off and this was the loss which was caused to the Bank which justified the forfeiture of the employer's contribution in the Provident Fund and withholding of gratuity amount and appropriating those amounts towards the dues of the Bank. The learned counsel for the appellants also argued that Rule 17 and Rule 18 of the Provident Fund Rules of the Bank operate in different field. According to him, while Rule 17 provides for forfeiture, Rule 18 refers to recovery. He submitted that in the present case, it was Rule 17 which applied. Rule 18 was not required to be invoked, because, the Bank was entitled to forfeit the amount under Rule 17. Therefore, the matter was not required to be decided by the Board as per rule 18 and no decision of the Board was necessary when forfeiture took

place under Rule 17. It was also contended that the decision of the Division Bench in the case of Ghanshyamlal (supra) was rendered in the background of different facts and that in that case, a resolution was passed by the Board after the decree was made in the suit in favour of the employee. In the present case, since no decision of the Board was required under Rule 18, as the matter was covered under Rule 17 which was independent of Rule 18, ratio of the said judgment cannot be pressed into service on behalf of the respondent. It was also contended that the fact that the Bank had suffered the loss cannot be disputed and the amount of loss was far in excess of the dues which were payable to the respondent and, therefore, resorting to provisions of Rule 18 would have been a mere empty formality and no prejudice was, in fact, caused to the respondent by not following that Rule. In support of this contention, the learned counsel relied upon the decision of the Supreme Court in Managing Director, ECIL Vs. B. Karunakar, reported in AIR 1994 SC 1074, in which the Supreme Court in para 7 (v) of the judgment, in the context of the question as to the effect of an order of punishment when the report of the Inquiry Officer was not furnished to the employee, held that in cases where no prejudice is caused by not furnishing copy of the report and where even after the furnishing of the report, no different consequences would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits and such a course would amount to rewarding the dishonest and the guilty and thus, to stretching the concept of justice to illogical and exasperating limits and would amount to unnatural expansion of natural justice which in itself is antithetical to justice.

#. Rule 17 and Rule 18, which form part of the Provident Fund Rules of the Bank which fall for our consideration read as under.

"17. Any contributor who is dismissed for insubordination, misconduct, fraud or any other cause of like nature or retires from the Bank in consequence thereof he shall be entitled to his own contribution with interest accrued thereon at the rat and in the manner aforesaid and in respect of the Bank's contribution there shall be no forfeiture, excepting in the case where he is dismissed for misconduct causing financial loss to the Bank and in such case forfeiture shall be limited only to the extent of financial Loss caused.

18. It a contributor is dismissed for fraud or misconduct, the Bank shall be entitled to recover from the contribution made by the Bank to the individual account of contributor and the interest (simple and compound) credited in respect of such contribution, any loss or damage so resulting to the Bank, from the cause entailing such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared shall be paid to the Bank."

Rule 3 of the Gratuity Rules of the Bank, which also falls for our consideration is as follows.

"In case of termination of service of the Member on account of misconduct, Gratuity payable either under, Clause 1 or 2 hereof shall not be forfeited, except where such misconduct causes financial loss to the Bank (of which and of the amount of which the Bank shall be the sole Judge and its decision final) and in that case the forfeiture of the Gratuity shall be to extent of the financial loss only. The term "misconduct" for this purpose shall inter alia include any act or wilful omission or negligence causing any damage or loss to or destruction of property belonging to the Bank. Gratuity payable under Clause 1 hereof shall be forfeited if the services of the Member have been terminated for his riotous or disorderly conduct or any other act of violence on his part or for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

#. There is no dispute about the fact that the exact figure of financial loss that may have been caused to the Bank was never worked out either by the Bank or its Board under Rule 17 or Rule 18 of the said Rules. Undoubtedly, there was reference to the financial loss that was likely to be caused to the Bank and the dismissal order of the delinquent was made on the charges of misconduct being proved to the effect that his conduct was unbecoming of a Bank Officer, that he had failed in discharge of his duties with utmost care, honesty, integrity, devotion and diligence, that he had acted in a manner prejudicial to the interest of the Bank, that he had flouted the Bank Rules in granting advances, that he had accepted illegal

gratification from the borrowers for sanctioning loans and that he had shown gross negligence which was likely to involve the Bank in serious monetary loss. This is evident from the inquiry report, dated 13.3.'87, copy of which is annexed to the affidavit-in-reply at Annexure:B. It is clear from the findings on the basis of which, the respondent came to be dismissed that his dismissal was on various counts, the gravest of which was that he had accepted illegal gratification while sanctioning the loans.

#. Under Rule 17, it will be seen, that even cases of dismissal for insubordination or retirement are included. In the cases where the dismissal is for misconduct causing financial loss to the Bank, forfeiture limited to the extent of financial loss caused is contemplated by Rule 17. Therefore, the dismissal order should be on the basis of misconduct causing specific financial loss, which amount would be forfeited. So far as Rule 18 is concerned, it is a mere specific provision applicable to cases where the employee is dismissed for fraud or misconduct and any loss or damage has resulted to the Bank from the cause entailing such dismissal. In such cases, the Board is required to declare amount of loss or damage so resulting and thereupon, the amount so declared is required to be paid to the Bank. It is, therefore, obvious that Rule 17 would apply where the dismissal is for misconduct causing financial loss, meaning thereby specified financial loss, in which case forfeiture in respect of the Bank's contribution is permissible only to the extent of loss. In cases where loss is not so specified and the dismissal is for fraud or misconduct, loss or damage resulting to the Bank is required to be ascertained by the Board under Rule 18. In the present case, the order of dismissal did not specify any financial loss though it referred to likely monetary loss that may be caused to the Bank. The finding that loss was likely to be caused to the Bank was not a finding to the effect that financial loss was caused to the Bank. Admittedly, no amount of actual financial loss or damage relatable either to Rule 17 or Rule 18 is worked out either by the Bank or by the Board under the respective Rules. Therefore, there was absolutely no occasion to make the impugned order withholding the Provident Fund contribution of the employer under the impugned order at Annexure:A to the petition either under Rule 17 or Rule 18.

#. Rule 3 of the Gratuity Rules as noticed hereinabove shows that latter part is applicable to cases where services of of a member have been terminated for his

riotous or disorderly conduct or any other act of violence on his part or for any act which constitutes an offence involving moral turpitude, provided that such an offence is committed by him in the course of his employment. The respondent is not convicted of any such offence. In fact, it appears that he was not prosecuted for reasons best known to the Bank though intermediaries came to be prosecuted and they had pleaded guilty. This is evident from the decision of the Division Bench in Letters Patent Appeal No. 112/90, decided on 4.2.94. Testing the impugned order of withholding of the gratuity payable to the respondent on the anvil of the first part of Clause 3, it is clear that requirement of ascertainment of the financial loss caused to the Bank, which is a pre-condition to forfeiture of the gratuity to the extent of financial loss only, is not established, since, admittedly, financial loss actually caused to the Bank was not worked out.

#. The impugned orders were made in the year 1988 and at this distant point of time, it would not be appropriate to allow the Bank to make fresh orders. Ascertainment of financial loss was required to be made before making the impugned orders and since that was not done, the impugned orders are illegal being contrary to the rules. We, therefore, find ourselves in complete agreement with the reasoning adopted by the learned Single Judge and the findings reached by him. The appeal is, therefore, dismissed, with no order as to costs. The Civil Application stands rejected with no order as to costs.

##. The learned Single Judge had directed the dues of the respondent to be paid before 30th September, 2002. Time for paying dues of the respondent is extended upto 31st January, 2003.

[R.K. ABICHANDANI, J.]

[SHARAD D. DAVE, J.]
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